

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Jimmy Duncan)	Civil Action No.: 8:07-268-MBS-BHH
)	
Plaintiff,)	
)	
vs.)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
Jack Langestein, Travis Guess, Cpl)	
Wade, Officer Fincher, Officer Henly,)	
Sgt. Franklin James, Nurse NFN)	
Moore,)	
)	
Defendants.)	

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On March 17, 2008, the defendants filed a motion for summary judgment. On March 18, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding *pro se*, the court filed a second order on April 24, 2008, giving the plaintiff through May 16, 2008, to file his response to the motion for summary judgment. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989). Furthermore, it is also recommended that defendants' motion to dismiss filed on April 21, 2008 (Dkt. # 50) be denied as moot.

s/Bruce Howe Hendricks
United States Magistrate Judge

May 20, 2008

Greenville, South Carolina